

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

MICHAEL T., a person with diminished capacity, *et al.*,)
)
)

Plaintiffs,)

CASE NO. 2:15-cv-09655

WILLIAM CROUCH, in his official capacity as)
Secretary of the WEST VIRGINIA DEPARTMENT)
OF HEALTH AND HUMAN RESOURCES,)

Defendant.)

**DEFENDANT’S MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

Defendant William Crouch, Secretary of the West Virginia Department of Health and Human Resources, moves to dismiss Plaintiffs’ Amended Complaint (ECF No. 14) or, the alternative, to grant summary judgment for Defendant on all counts. A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b) is warranted when a complaint fails to “present factual allegations that ‘state a claim to relief that is plausible on its face.’” *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). As described in detail in Defendant’s accompanying memorandum, DHHR has devised a new service authorization system, and is no longer assessing new budgets for individuals based on the service authorization system challenged in Plaintiffs’ amended complaint. Because Defendant is no longer using the complained of service authorization process, the Plaintiffs’ claims are moot, and any challenge to the State’s new service authorization system is not properly before the Court. Accordingly, this case should be dismissed.

In the alternative, this Court should grant summary judgment for Defendant on all counts of the amended complaint. Summary judgment is appropriate when there is no genuine dispute as to any material fact, and the moving party is plainly entitled to judgment in its favor as a matter of law. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A moving party is “entitled to a judgment as a matter of law” when the nonmoving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). As explained in further detail in Defendant’s accompanying memorandum, Plaintiffs have produced no evidence that Plaintiffs’ service authorization system violates the Due Process Clause or federal Medicaid law, or that it discriminates against individuals with disabilities.

Respectfully submitted,

/s/ Kimberly Stitzinger

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July 2, 2018

CERTIFICATE OF SERVICE

I, Caroline M. Brown, hereby certify that I caused a true and correct copy of Defendant's **Motion to Dismiss, or in the Alternative, Motion for Summary Judgment** to the following via ECF notification:

Bren J. Pomponio
Gary M. Smith
Lydia C. Milnes
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Dated: July 2, 2018

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